

## SUBCHAPTER I—WITHDRAWAL LIABILITY FOR MULTIEMPLOYER PLANS

### PART 4203—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

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AUTHORITY: 29 U.S.C. 1302(b)(3).

SOURCE: 61 FR 34083, July 1, 1996, unless otherwise noted.

#### § 4203.1 Purpose and scope.

(a) *Purpose.* The purpose of this part is to prescribe procedures whereby a multiemployer plan may, pursuant to sections 4203(f) and 4208(e)(3) of ERISA, request the PBGC to approve a plan amendment which establishes special complete or partial withdrawal liability rules.

(b) *Scope.* This part applies to a multiemployer pension plan covered by title IV of ERISA.

#### § 4203.2 Definitions.

The following terms are defined in § 4001.2 of this chapter: complete withdrawal, employer, ERISA, multiemployer plan, PBGC, person, plan, plan sponsor, and plan year.

#### § 4203.3 Plan adoption of special withdrawal rules.

(a) *General rule.* A plan may, subject to the approval of the PBGC, establish by plan amendment special complete or partial withdrawal liability rules. A complete withdrawal liability rule adopted pursuant to this part shall be similar to the rules for the construction and entertainment industries described in section 4203 (b) and (c) of ERISA. A partial withdrawal liability rule adopted pursuant to this part shall be consistent with the complete withdrawal rule adopted by the plan. A plan amendment adopted under this part

may not be put into effect until it is approved by the PBGC.

(b) *Discretionary provisions of the plan amendment.* A plan amendment adopted pursuant to this part may—

(1) Cover an entire industry or industries, or be limited to a segment of an industry; and

(2) Apply to cessations of the obligation to contribute that occurred prior to the adoption of the amendment.

#### § 4203.4 Requests for PBGC approval of plan amendments.

(a) *Filing of request.* A plan shall apply to the PBGC for approval of a plan amendment which establishes special complete or partial withdrawal liability rules. The request for approval shall be filed after the amendment is adopted. PBGC approval shall also be required for any subsequent modification of the plan amendment, other than a repeal of the amendment which results in employers being subject to the general statutory rules on withdrawal.

(b) *Who may request.* The plan sponsor, or a duly authorized representative acting on behalf of the plan sponsor, shall sign and submit the request.

(c) *Where to file.* The request shall be delivered by mail or submitted by hand to Reports Processing, Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005-4026.

(d) *Information.* Each request shall contain the following information:

(1) The name and address of the plan for which the plan amendment is being submitted, and the telephone number of the plan sponsor or its authorized representative.

(2) A copy of the executed amendment, including the proposed effective date.

(3) A statement certifying that notice of the adoption of the amendment and the request for approval filed under this part has been given to all employers who have an obligation to contribute under the plan and to all employee organizations representing employees covered under the plan.

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(4) A statement indicating how the withdrawal rules in the plan amendment would operate in the event of a sale of assets by a contributing employer or the cessation of the obligation to contribute or the cessation of covered operations by all employers.

(5) A copy of the plan's most recent actuarial valuation.

(6) For each of the previous five plan years, information on the number of plan participants by category (active, retired and separate vested) and a complete financial statement. This requirement may be satisfied by the submission for each of those years of Form 5500, including schedule B, or similar reports required under prior law.

(7) A detailed description of the industry to which the plan amendment will apply, including information sufficient to demonstrate the effect of withdrawals on the plan's contribution base, and information establishing industry characteristics which would indicate that withdrawals in the industry do not typically have an adverse effect on the plan's contribution base. Such industry characteristics include the mobility of employees, the intermittent nature of employment, the project-by-project nature of the work, extreme fluctuations in the level of an employer's covered work under the plan, the existence of a consistent pattern of entry and withdrawal by employers, and the local nature of the work performed.

(e) *Supplemental information.* In addition to the information described in paragraph (d) of this section, a plan may submit any other information it believes is pertinent to its request. The PBGC may require the plan sponsor to submit any other information the PBGC determines it needs to review a request under this part.

## § 4203.5 PBGC action on requests.

(a) *General.* The PBGC shall approve a plan amendment providing for the application of special complete or partial withdrawal liability rules upon a determination by the PBGC that the plan amendment—

(1) Will apply only to an industry that has characteristics that would make use of the special withdrawal rules appropriate; and

(2) Will not pose a significant risk to the insurance system.

(b) *Notice of pendency of request.* As soon as practicable after receiving a request for approval of a plan amendment containing all the information required under § 4203.4, the PBGC shall publish a notice of the pendency of the request in the FEDERAL REGISTER. The notice shall contain a summary of the request and invite interested persons to submit written comments to the PBGC concerning the request. The notice will normally provide for a comment period of 45 days.

(c) *PBGC decision on request.* After the close of the comment period, PBGC shall issue its decision in writing on the request for approval of a plan amendment. Notice of the decision shall be published in the FEDERAL REGISTER.

## § 4203.6 OMB control number.

The collections of information contained in this part have been approved by the Office of Management and Budget under OMB control number 1212-0050.

## PART 4204—VARIANCES FOR SALE OF ASSETS

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4204.22 PBGC action on requests.

AUTHORITY: 29 U.S.C. 1302(b)(3), 1384(c).

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